

SUBCHAPTER B—SECURITY RULES FOR ALL MODES OF TRANSPORTATION

PART 1520—PROTECTION OF SENSITIVE SECURITY INFORMATION

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AUTHORITY: 49 U.S.C. 114, 5103, 40119, 44901-44907, 44913-44914, 44916-44918, 44935-44936, 44942, 46105.

SOURCE: 67 FR 8351, Feb. 22, 2002, unless otherwise noted.

§ 1520.1 Applicability and definitions.

(a) This part governs the release, by the Transportation Security Administration and by other persons, of records and information that has been obtained or developed during security activities or research and development activities.

(b) For purposes of this part:

Record includes any writing, drawing, map, tape, film, photograph, or other means by which information is preserved, irrespective of format.

Vulnerability assessment means any examination of a transportation system, vehicle, or facility to determine its vulnerability to unlawful interference.

(c) The authority of the Administrator under this part may be further delegated within TSA.

(d) The Administrator's authority under this part to withhold or to disclose sensitive security information is also exercised, in consultation with the Administrator, by the Commandant of the United States Coast Guard, as to matters affecting and information held by the Coast Guard, and the Administrator of each DOT administration, as to matters affecting and information held by that administration, and any individual formally designated to act in their capacity.

§ 1520.3 Records and information withheld by the Department of Transportation.

(a) Except as provided in paragraphs (c) and (d) of this section, and notwith-

standing the Freedom of Information Act (5 U.S.C. 552) or other laws, the records and information described in § 1520.7 and paragraph (b) of this section are not available for public inspection or copying, nor is information contained in those records released to the public.

(b) Section 1520.7 describes the information that TSA prohibits from disclosure. The Administrator prohibits disclosure of information developed in the conduct of security or research and development activities under 49 U.S.C. 40119 if, in the opinion of the Administrator, the disclosure of such information would:

(1) Constitute an unwarranted invasion of privacy (including, but not limited to, information contained in any personnel, medical, or similar file);

(2) Reveal trade secrets or privileged or confidential information obtained from any person; or

(3) Be detrimental to the safety of persons traveling in transportation.

(c) If a record contains information that the Administrator determines cannot be disclosed under this part, but also contains information that can be disclosed, the latter information, on proper Freedom of Information Act request, will be provided for public inspection and copying. However, if it is impractical to redact the requested information from the document, the entire document will be withheld from public disclosure.

(d) After initiation of legal enforcement action, if the alleged violator or designated representative so requests, the Chief Counsel, or designee, may provide copies of portions of the enforcement investigative report (EIR), including sensitive security information. This information may be released only to the alleged violator or designated representative for the sole purpose of providing the information necessary to prepare a response to the allegations contained in the legal enforcement action document. Such information is not released under the Freedom of Information Act. Whenever

such documents are provided to an alleged violator or designated representative, the Chief Counsel or designee advises the alleged violator or designated representative that—

(1) The documents are provided for the sole purpose of providing the information necessary to respond to the allegations contained in the legal enforcement action document; and

(2) Sensitive security information contained in the documents provided must be maintained in a confidential manner to prevent compromising civil aviation security, as provided in § 1520.5.

§ 1520.5 Records and information protected by others.

(a) *Duty to protect information.* The following persons must restrict disclosure of and access to sensitive security information described in § 1520.7 (a) through (g), (j), (k), and (m) through (r), and, as applicable, § 1520.7 (l) to persons with a need to know and must refer requests by other persons for such information to TSA or the applicable DOT administration:

(1) Each person employed by, contracted to, or acting for a person listed in this paragraph (a).

(2) Each airport operator under part 1542 of this chapter.

(3) Each aircraft operator under part 1544 of this chapter.

(4) Each foreign air carrier under part 1546 of this chapter.

(5) Each indirect air carrier under part 1548 of this chapter.

(6) Each aircraft operator under § 1550.5 of this chapter.

(7) Each person receiving information under § 1520.3 (d).

(8) Each person for which a vulnerability assessment has been authorized, approved, or funded by DOT, irrespective of the mode of transportation.

(b) *Need to know.* For some specific sensitive security information, the Administrator may make a finding that only specific persons or classes of persons have a need to know. Otherwise, a person has a need to know sensitive security information in each of the following circumstances:

(1) When the person needs the information to carry out DOT-approved, accepted, or directed security duties.

(2) When the person is in training to carry out DOT-approved, accepted, or directed security duties.

(3) When the information is necessary for the person to supervise or otherwise manage the individuals carrying to carry out DOT-approved, accepted, or directed security duties.

(4) When the person needs the information to advise the persons listed in paragraph (a) of this section regarding any DOT security-related requirements.

(5) When the person needs the information to represent the persons listed in paragraph (a) of this section in connection with any judicial or administrative proceeding regarding those requirements.

(c) *Release of sensitive security information.* When sensitive security information is released to unauthorized persons, any person listed in paragraph (a) of this section or individual with knowledge of the release, must inform DOT.

(d) *Violation.* Violation of this section is grounds for a civil penalty and other enforcement or corrective action by DOT.

(e) *Applicants.* Wherever this part refers to an aircraft operator, airport operator, foreign air carrier, or indirect air carrier, those terms also include applicants for such authority.

(f) *Trainees.* An individual who is in training for a position is considered to be employed by, contracted to, or acting for persons listed in paragraph (a) of this section, regardless of whether that individual is currently receiving a wage or salary or otherwise is being paid.

§ 1520.7 Sensitive security information.

Except as otherwise provided in writing by the Administrator as necessary in the interest of safety of persons in transportation, the following information and records containing such information constitute sensitive security information:

(a) Any approved, accepted, or standard security program under the rules listed in § 1520.5(a)(1) through (6), and any security program that relates to United States mail to be transported by air (including that of the United

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States Postal Service and of the Department of Defense); and any comments, instructions, or implementing guidance pertaining thereto.

(b) Security Directives and Information Circulars under § 1542.303 or § 1544.305 of this chapter, and any comments, instructions, or implementing guidance pertaining thereto.

(c) Any selection criteria used in any security screening process, including for persons, baggage, or cargo under the rules listed in § 1520.5(a)(1) through (6).

(d) Any security contingency plan or information and any comments, instructions, or implementing guidance pertaining thereto under the rules listed in § 1520.5(a)(1) through (6).

(e) Technical specifications of any device used for the detection of any deadly or dangerous weapon, explosive, incendiary, or destructive substance under the rules listed in § 1520.5(a)(1) through (6).

(f) A description of, or technical specifications of, objects used to test screening equipment and equipment parameters under the rules listed in § 1520.5(a)(1) through (6).

(g) Technical specifications of any security communications equipment and procedures under the rules listed in § 1520.5(a)(1) through (6).

(h) As to release of information by TSA: Any information that TSA has determined may reveal a systemic vulnerability of the aviation system, or a vulnerability of aviation facilities, to attack. This includes, but is not limited to, details of inspections, investigations, and alleged violations and findings of violations of 14 CFR parts 107, 108, or 109 and 14 CFR 129.25, 129.26, or 129.27 in effect prior to November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001); or parts 1540, 1542, 1544, 1546, 1548, or § 1550.5 of this chapter, and any information that could lead the disclosure of such details, as follows:

(1) As to events that occurred less than 12 months before the date of the release of the information, the following are not released: the name of an airport where a violation occurred, the regional identifier in the case number, a description of the violation, the regulation allegedly violated, and the iden-

tity of the aircraft operator in connection with specific locations or specific security procedures. TSA may release summaries of an aircraft operator's total security violations in a specified time range without identifying specific violations. Summaries may include total enforcement actions, total proposed civil penalty amounts, total assessed civil penalty amounts, number of cases opened, number of cases referred to TSA or FAA counsel for legal enforcement action, and number of cases closed.

(2) As to events that occurred 12 months or more before the date of the release of information, the specific gate or other location on an airport where an event occurred is not released.

(3) The identity of TSA or FAA special agent who conducted the investigation or inspection.

(4) Security information or data developed during TSA or FAA evaluations of the aircraft operators and airports and the implementation of the security programs, including aircraft operator and airport inspections and screening point tests or methods for evaluating such tests under the rules listed in § 1520.5(a)(1) through (6).

(i) As to release of information by TSA: Information concerning threats against transportation.

(j) Specific details of aviation security measures whether applied directly by the TSA or entities subject to the rules listed in § 1520.5(a)(1) through (6). This includes, but is not limited to, information concerning specific numbers of Federal Air Marshals, deployments or missions, and the methods involved in such operations.

(k) Any other information, the disclosure of which TSA has prohibited under the criteria of 49 U.S.C. 40119.

(l) Any draft, proposed, or recommended change to the information and records identified in this section.

(m) The locations at which particular screening methods or equipment are used under the rules listed in § 1520.5(a)(1) through (6) if TSA determines that the information meets the criteria of 49 U.S.C. 40119.

(n) Any screener test used under the rules listed in § 1520.5(a)(1) through (6).

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(o) Scores of tests administered under the rules listed in §1520.5(a)(1) through (6).

(p) Performance data from screening systems, and from testing of screening systems under the rules listed in §1520.5(a)(1) through (6).

(q) Threat images and descriptions of threat images for threat image projection systems under the rules listed in §1520.5(a)(1) through (6).

(r) Information in a vulnerability assessment that has been authorized, approved, or funded by DOT, irrespective of mode of transportation.